TESTIMONY OF
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Good morning Chairman Stevens, Co-Chairman Inouye and Members of the Committee. I am Martin D. Franks, Executive Vice President, Planning, Policy and Government Relations for the CBS Corporation. I appreciate the opportunity to appear before you today on the topic of decency on television.

We at CBS know that we are a guest in viewers' living rooms. Thus, aside from any legal regulatory requirements that govern our content, we strongly believe that we have an obligation to remain attuned to our audience and its needs, tastes, sensibilities and expectations.

One of my responsibilities is overseeing the CBS Television Network's Standards and Practices Department which reviews all scripted and reality programming, movies, commercial messages and promotional announcements before they air. In the case of prime time programs, that process involves careful scrutiny and revision of multiple drafts of scripts, including the video first draft, known as the rough cut, and the final air copy. From that final air copy, the Standards Department determines and applies the appropriate TV ratings. We do not assign those ratings on a wholesale basis. Each episode of each show is reviewed and rated individually.

When any script contains even a hint of possibly indecent material, a separate review is performed by the CBS Law Department, and such a show does not reach air until it has passed muster by both CBS Law and Standards and Practices.

For live entertainment programming, CBS for years has employed delay equipment to make possible the deletion of unanticipated offensive language. But this system is designed to catch only audio. With respect to video, the first line of defense for our network, and for that matter, the entire industry, at live news, entertainment and sporting events, has been to "cut away the camera," averting the camera's eye away from inappropriate graphic subjects.

Given the history of broadcast television up until fairly recently, deleting troublesome video has never been a concern, except perhaps for the occasional streaker dashing across a sports field, a circumstance we all have become fairly expert at avoiding.

Unfortunately, we now understand all too well that people in front of a live camera --whether it be a celebrity on an awards show, a fan in the stands of a sporting event, or even a bystander at the Macy's Thanksgiving Day Parade-- can push the limits of appropriateness and yield ineffective the cut-away camera, our first line of video defense. The consequences of serving our viewers by delivering to them in the comfort of their living rooms live events for free that they are unable to attend in person can be severe: We are liable for potentially heavy monetary and licensing penalties for broadcasting video that contains fleeting images of people who take advantage of our air for their own purposes and without any liability on their part.

CBS has responded by implementing for all live entertainment programming, an enhanced delay system for deletion of any inappropriate audio and/or video footage, if needed. Developed by CBS engineers, and first put in place for the 2004 Grammy Awards, the system is groundbreaking, costly to operate and maintain, and requires skilled operators able to work under extraordinary pressure. After all, a baseball player who fails six times out of ten at the plate is a cinch for the Hall of Fame, whereas the Standards Editor who bats only .999 is subject to federal investigation as well as fines and license revocation for his or her employer.

Despite our efforts to do everything technically, mechanically and humanly possible to eliminate inappropriate language and behavior, we do worry that anything more drastic could mean the elimination of live programming in this country. That would not be a good outcome for viewers of broadcast television, who are now able to access for free major live sports and entertainment events.

As broadcasters, we have an obligation to operate in the public interest. The FCC and the courts have consistently interpreted this to require broadcasters to air programming that is responsive to the interests and needs of our communities. Our public interest duty, therefore, mandates that we serve a broad spectrum of America, and not just one narrow group. We must strive to inform and entertain a diverse population that forms the fabric of America. And we do: CBS offers among the best in news, sports, and entertainment, as well as educational and informational programming for children. Our entertainment programming includes scripted comedies and dramas, reality shows, original movies, and awards events. That this programming appeals to a wide cross-section of American tastes is demonstrated on the website of Parents Television

Council. While I disagree with them often, I compliment Brent Bozell and the PTC for having the courage and intellectual rigor to be specific in their criticisms and rejecting overbroad generalizations. One way they do so is by singling out shows worthy of their praise, the "best of" list, and those that are not, the "worst of" list. CBS shows seem to end up on both of the PTC lists.

Millions of Americans, however, disagree with PTC's "worst of" categorization. Week after week, for years now, millions of homes, in every market in the country –from Salt Lake City to New York City-- tune in to shows on the "worst of" list. Two of those shows, for example, "CSI: Crime Scene Investigation" and "Without A Trace" are among the top ten most popular shows in America, with some one-quarter of all households watching television making these programs their weekly choices. These shows, we concede, contain some scenes inappropriate for younger children (and they usually carry a V Chip rating that reflects that fact), but they do so in a way that is integral to the context of an episode.

Context is everything. Catching the bad guys who break the law and bringing them to justice is the theme of the forensic science program "CSI." The program reportedly is inspiring hundreds of college students to pursue a career in the field, in which at least one expert estimates an additional 10,000 scientists are needed nationwide.[1] "Without A Trace," a drama about the missing persons unit of the FBI, necessarily recounts stories about the not-so-pretty disappearance of people, and concludes each program with FBI-supplied information about a real-life missing person.

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[1] "The CSI Effect," Nancy McGuire, http://www.chemistry.org/portal/a/c/s/1/feature_ent.html?id=c373e9026ca0695f8f6a17245d830100, the website of the American Chemical Society, March 7, 2005

Just this past summer, a viewer responding to one of these segments led to the recovery of two missing children.[2]

In a nation with such diverse tastes and backgrounds, and where only about one-third of the homes have children, policymakers cannot and should not be deciding what Americans watch on television. These are fundamental decisions for those capable of making such decisions --adult viewers and parents of child viewers. And what is appropriate for one viewer may not be for another. That is where the TV ratings and V-chip tools come in. The TV ratings system gives parents information about the age-appropriateness and content of television programs. And the V-chip enables parents to automatically block programs by TV ratings. Beginning six years ago this month, federal regulations mandated the manufacture of a V-chip in all TV sets 13 inches and larger sold in this country.

I am surprised that so many in Washington seem ready to give up on these tools. It is not perfect, but neither would any new system be, including a "safe harbor" for violent programming, which is contemplated by S. 616, the bill introduced by Senators Rockefeller and Hutchison. Defining violent programming and cordoning it off from children who have not yet been tucked into bed is a near-impossible exercise as evidenced by proposed solutions. For example, there are strong advocates of restricting the airing of violent material during certain hours who argue that league-sanctioned sponsored sports, such as NFL, NBA and NHL games, should be exempt. Yet, these advocates would not exempt professional wrestling, because it contains gratuitous

[2] Federal Bureau of Investigation press release, July 25, 2005, http://oklahomacity.fbi.gov/pressrel/2005/jul25_05.htm.

violence.[3] Other advocates of limiting violence to a safe harbor would carve out simulated war activities that are "distant in time," as well as other combative activities, such as a "shoot-out at the old corral" or a Star Wars-type laser gun confrontation.[4] It is unclear under these definitions whether "Saving Private Ryan" or "Schindler's List" could ever be shown during prime time. And news –if it is not made exempt from any safe harbor, coverage of stories involving war, crime and other potentially violent material would have to be shunted to certain hours of the day. And perhaps the same is true for traditional "family-friendly" nature programs, some of whose episodes are entirely devoted to bloody shark and hyena attacks. These are line-drawing activities meant for viewers and parents, not for Congress or the FCC.

That brings us back to TV ratings and V-chip. Broadcast and cable programmers all label their product with the TV ratings, which can be accessed and used by viewers without any additional technology whatsoever. These ratings include descriptors alerting viewers that an episode may contain violent or sexual content. And the V-chip, as well as cable and satellite blocking techonology, found in millions of television sets and set top boxes today, can be programmed to block the receipt of programming carrying designated TV ratings. With the millions of new sets that will be sold as a result of this Committee's proposed hard deadline for the digital transition to be completed, many more millions of V-chip-equipped sets will enter the market annually.

Critics of these tools argue that parents have no idea how the V-chip works or even know that their television set contains one. The V-chip is worthless, they say. We agree that there is work to be done on educating consumers, and Jack Valenti came

[3] In the Matter of Violent Television Programming and its Impact on Children, FCC's MB Docket No. 04-261, Comments of Pappas Telecasting Companies, filed October 15, 2004.
[4] *Id.*, Comments of Morality in Media, filed September 7, 2004.

before this Committee today to describe an unprecedented cross-industry plan for communicating to parents about the power they have to control television in their homes. We appreciate the role this Committee played late last year in urging us all to act in unison. And we hope that you will all be patient as we roll out this first-of-a-kind campaign about tools that were sanctioned and enacted by Congress. It represents by far the best hope anytime soon to help parents control their children's television viewing.

But let's not forget how far we have come already. Even back in July 2001, a mere 18 months after the V-chip mandate for television sets became effective, The Henry Kaiser Family Foundation issued a study that found that 36% of all parents who were aware of the V-chip used it to regulate their children's viewing habits.[5] Of those parents who used the V-chip, the study reported, 86% said it was useful for blocking shows.[6] And of those parents who did not use the V-chip, 51% said it was because their children usually watch TV with an adult in the vicinity, and 25% said it was because they trust their children to make the right decisions.[7] As for the TV ratings associated with the V-chip, 56% of parents in the 2001 study reported using them to make decisions about what shows their children watch. This is an impressively significant number for a new system, particularly when compared with use of the movie ratings system, which had been around for 33 years at the time and which 84% of parents reported using.[8]

Finally, let me mention "family-friendly programming." In the 1990s, as a conscious strategy, CBS offered several programs in that genre in the 8 o'clock hour: "Touched by an Angel," "Cosby," "Dr. Quinn, Medicine Woman," and "Promised

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[5] "Parents and the V-Chip 2001: A Kaiser Family Foundation Survey, Toplines," www.kff.org/entmedia/vchip.cfm, page 1.
[6] *Id.* at 13.
[7] *Id.* at 3.
[8] *Id.* at 1.

Land." And we got killed in the marketplace. More recently, the first half of CBS's widely acclaimed "Pope John Paul II" miniseries was unable to capture even a third of the viewers compared to "Desperate Housewives" and far less than half that of "Grey's Anatomy." And our ratings were only slightly better than those garnered earlier that week by ABC's movie version of the Pope's life.[9]

Let me be clear, CBS would be happy to go back to the three-channel era that I and many others recall fondly, but in today's world of hundreds of channels --a state of affairs frequently praised in other public policy debates as "viewer choice and diversity" --looking back lovingly at the past will not guide us toward a solution for today. Viewers now have the tools to respond to this amazing choice and diversity, and we in the television industry stand ready to educate and encourage them to actively use those tools.

[9] "Sunday Night Sinners Outshine CBS's 'Pope'," The Hollywood Reporter, www.hollywoodreporter.com, December 6, 2005.